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ONE HUNDRED SIXTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

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June 19, 2000

BY FACSIMILE

The Honorable Carol Browner
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave, N.W.
Washington, D.C. 20460

Dear Administrator Browner:

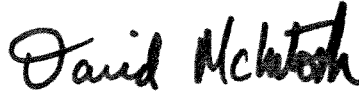
I am concerned about the fairness of a proceeding the Environmental Protection Agency (EPA) is bringing against the Tennessee Valley Authority (TVA) using EPA's Environmental Appeals Board (EAB).

At issue is EPA's Administrative Order finding that TVA is in violation of the Clean Air Act's (CAA's) Prevention of Significant Deterioration Program. A May 4, 2000 Memorandum from you to EAB Judges Fulton, McCallum, Reich, and Stein requests that EAB adopt a short procedural schedule in this case. The Memorandum asks EAB to provide for only "limited discovery and to provide limited oral testimony [and to] close the administrative record by August 1, 2000" and render a decision by September 15th. However, in similar cases now pending in Federal court, EPA has agreed to two years as opposed to two months of discovery and trial preparation. For example, EPA acknowledges that this type of case involves "complex environmental matters" and that "**extensive** discovery will be required" (Joint EPA and SIGECO (an Indiana power company) Case Management Plan, *U.S. v. SIGECO*, No. IP 99-1692-C-M/S, p. 8, S.D. Ind., March 3, 2000, emphasis added).

Pursuant to the Constitution and Rules X and XI of the United States House of Representatives, I request that you respond to the questions in the attachment by Friday, June 23, 2000. Please deliver your response to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building. If you have any questions about this request, please call Subcommittee Counsel Bill Waller at 226-2067.

Thank you for your attention to this request.

Sincerely,

A handwritten signature in black ink that reads "David McIntosh". The signature is written in a cursive, slightly slanted style.

David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

Attachment

cc: The Honorable Dan Burton
The Honorable Dennis Kucinich

Q1. Why is a 2-month (May 4, 2000 through June 30th) schedule for discovery appropriate in the Environmental Protection Agency's (EPA's) proceeding against the Tennessee Valley Authority (TVA), while EPA has agreed to two years of discovery against private power companies in similar cases?

Q2. Has EPA completed its official record of the documents EPA intends to rely on in the Environmental Appeals Board (EAB) proceeding? Has EPA provided TVA with all of the data and analyses EPA used to find TVA in violation of the Clean Air Act (CAA)?

Q3. When did EPA first begin seeking documents from TVA as part of its enforcement initiative that lead EPA to issue its Administrative Order?

Q4. Is EPA's November 3, 1999 Administrative Order against TVA, as amended, limited to the 18 maintenance projects identified in the order? If not, should TVA be provided additional time for discovery after EPA specifically identifies additional alleged violations?

Q5. Please explain how the procedure before the EAB to review EPA's Order will be fundamentally fair to TVA.